



Fast Track Proposed Regulation Agency Background Document

Agency name	Department of Environmental Quality
Virginia Administrative Code (VAC) citation	Primary Action: 9 VAC 25-720-120.C Secondary Action: 9 VAC 25-820-10 and 820-20
Regulation title	Primary Action: <u>Water Quality Management Planning Regulation</u> Secondary Action: <u>General VPDES Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed</u>
Action title	Primary Action: Amendments to Water Quality Management Planning Regulation; York River Basin Nutrient Waste Load Allocations. Secondary Action: Amendments to Chesapeake Bay Watershed General Permit Regulation; "Definitions" (Section 820-10) and "Purpose, applicability, delegation of authority" (Section 820-20)
Date this document prepared	August 30, 2007

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

Primary Action: The proposed amendments to 9 VAC 25-720-120.C. would revise the total nitrogen and total phosphorus waste load allocations (WLAs) for the Doswell Wastewater Treatment Plant (VA0029521), to exclude the portions attributable to Bear Island Paper Company, and add separate WLAs for Bear Island Paper. Hanover County holds the discharge permit for the Doswell WWTP and Bear Island Paper shares the outfall for their discharge.

At the Board's November 21, 2005 meeting, nutrient WLAs were adopted for significant dischargers in the York River basin. The basis for the allocations was a combination of each facility's design flow coupled with stringent nutrient reduction treatment. The Doswell WWTP was assigned nutrient WLAs based on these values:

Facility	Design Flow (MGD)	Annual Avg TN Concentration (mg/L)	TN WLA (lbs/yr)	Annual Avg TP Concentration (mg/L)	TP WLA (lbs/yr)
Doswell WWTP	1.0	6.0	18,273	0.7	2,132
Bear Island Paper	4.2	3.7	47,328	1.0	12,791
TOTALS	5.2		65,601		14,923

Bear Island Paper has requested a separate listing of their nutrient WLAs to allow participation in the Nutrient Credit Exchange Program, authorized under Virginia Code §62.1-44.19:12 through 19:19. The proposed revisions to 9 VAC 25-720-120.C. would satisfy the request, in conjunction with the proposed amendments to 9 VAC 25-820-10 and 820-20, described in the following section.

Secondary Action: Facilities eligible to participate in the Nutrient Credit Exchange Program include those with WLAs listed in Subsection C of Sections 50, 60, 70, 110 and 120 of the Water Quality Management Planning Regulation (9 VAC 25-720) as of January 11, 2006. Bear Island Paper’s WLAs are contained within the WLAs assigned to the Doswell WWTP; for Bear Island Paper to be eligible to participate in the Nutrient Credit Exchange Program their WLAs must be listed separately.

The proposed amendments to 9 VAC 25-820-10 and 820-20 will define certain industrial plants as existing facilities eligible to exchange nutrient credits. Assuming the separate WLAs proposed in 9 VAC 25-720.120.C. are approved, the conditions that would be satisfied are an industry which holds a separate WLA in the Water Quality Management Planning Regulation but does not hold an individual VPDES permit authorizing its discharge.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

At their October 25, 2007 meeting, the State Water Control Board adopted the following recommendations by staff of the Department of Environmental Quality:

1. That the Board authorize the Department to promulgate the attached proposal for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial. The Board's authorization should also be understood to constitute its adoption of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) the Department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.
2. That the Board authorize the Department to set an effective date 15 days after close of the 30-day public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the Department does not find it necessary to make any changes to the proposal.
3. Should the proposal fail to complete the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act or changes to the proposal be needed, it is recommended that the Board authorize the Director to make the decision under 9 VAC 25-10-30.C. concerning the use of the participatory approach or alternatives.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

State mandate in the Code of Virginia, §62.1-44.15, is the source of legal authority identified to promulgate these amendments. The promulgating entity is the State Water Control Board.

The scope and purpose of the State Water Control Law is to protect and to restore the quality of state waters, to safeguard the clean waters from pollution, to prevent and to reduce pollution and to promote water conservation. The State Water Control Law (Code of Virginia) at §62.1-44.15(10) mandates the Board to adopt such regulations as it deems necessary to enforce the general water quality management program of the Board in all or part of the Commonwealth. In addition, §62.1-44.15(14) requires the Board to establish requirements for the treatment of sewage, industrial wastes and other wastes that are consistent with the purposes of this chapter. The specific effluent limits needed to meet the water quality goals are discretionary.

The correlation between the proposed regulatory actions and the legal authority identified above is that the amendments being considered are modifications of the current requirements for the treatment of wastewater that will contribute to the attainment of the Virginia Water Quality Standards.

The Office of Attorney General has been requested to review this regulatory package and certify the Board's authority to adopt these amended point source nutrient discharge regulations.

State Water Control Law (Code of Virginia) web site:
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+62.1-44.15>

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the proposed amendments is to revise the total nitrogen and total phosphorus waste load allocations (WLAs) for the Doswell Wastewater Treatment Plant, to exclude the portions attributable to Bear Island Paper Company, and add separate WLAs their industrial facility. These revisions will make Bear Island Paper accountable for their own nutrient discharges and eligible to participate in the Nutrient Credit Exchange Program. The beneficial results of nutrient reduction from point sources in the Bay watershed are maintained with these changes, as the sum of the WLAs for the individual plants in question will be the same as the original WLAs originally assigned just to the Doswell plant (i.e., no increase in nutrient WLAs results from these changes).

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The proposed amendments are expected to be non-controversial, and therefore justify using the fast-track process. The Primary Action under this proposal will reduce the Doswell WWTP TN and TP WLAs to exclude the portion of the discharge attributable to Bear Island Paper Company, and add to the listing separate WLAs for Bear Island Paper. The total WLAs from the combined discharge remain unchanged, and Bear Island Paper will be accountable for their own nutrient discharges.

The Secondary Action will simply revise the definition of “Existing Discharge” to include certain industrial plants that have WLAs in the Water Quality Management Planning Regulation, but do not hold an individual VPDES permit, allowing them to participate in the Nutrient Credit Exchange Program.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the “Detail of changes” section.)

- A. Water Quality Management Plan Regulation; 9 VAC 25-720-120.C. - York River Basin, Nitrogen and phosphorus waste load allocations to restore the Chesapeake Bay and its tidal rivers.

For the **Doswell WWTP** (VA0029521), revise the total nitrogen waste load allocation figure from **65,601** to **18,273** pounds per year, and the total phosphorus waste load allocation figure from **14,923** to **2,132** pounds per year. Add to the listing **Bear Island Paper Company**, with a total nitrogen waste load allocation figure of **47,328** pounds per year, and a total phosphorus waste load allocation figure of **12,791** pounds per year. A copy of the amended section for 9 VAC 25-720-70 is attached.

- B. General VPDES Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed; 9 VAC 25-820:
 1. Section 820-10 – add the following as the last sentence in the definition of “Existing Facility”: ...“*shall also mean and include any industry which holds a separate waste load allocation in the Water Quality Management Planning Regulation but does not hold an individual VPDES permit authorizing its discharge*”.
 2. Sections 820-20 and 820-70– Where applicable, add references to the revised definition of “Existing Facility”.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) *other pertinent matters of interest to the regulated community, government officials, and the public.*

If there are no disadvantages to the public or the Commonwealth, please indicate.

The public will benefit, as these amendments will result in the discharge of reduced amounts of nitrogen and phosphorus in the Chesapeake Bay watershed. This, in turn, will aid water quality restoration in the Bay and its tributary rivers, and assist in meeting the water quality standards necessary for protection of the living resources that inhabit the Bay. Hanover County and Bear Island Paper will benefit, as each will now be accountable for just the nutrient loads discharged by their individual plants. Additionally, having waste load allocations assigned in 9 VAC 25-720-120, along with the revised definition of "Existing Facility" in 9 VAC 25-820-10, will allow Bear Island Paper to participate in the Nutrient Credit Exchange Program, which was authorized by the Virginia General Assembly to aid in achieving point source nutrient load reductions more cost-effectively and in a timely manner. There is no disadvantage to the agency or the Commonwealth that will result from the adoption of these amendments.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

Notification was sent 2/18/05 to the appropriate General Assembly Committees (in accordance with §62.1-44.15(10), Virginia Code), describing provisions of the regulations, finally adopted by the Board in late 2005, which may be more restrictive than applicable federal requirements along with the reason why those provisions were needed. Because EPA has no specific regulation that establishes nutrient effluent limits in permits, some might view the proposals as more stringent than federal requirements and for this reason the General Assembly was notified during the original rulemaking to ensure the intent of the Code was met.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

Only Hanover County, which owns and operates the Doswell WWTP, is particularly affected by the proposed amendments.

Public Participation

Please include a statement that in addition to any other comments on the regulation, the agency is seeking comments on the costs and benefits of the proposal, the potential impacts on the regulated community and the impacts of the regulation on farm or forest land preservation.

In addition to any other comments, the Board is seeking comments on the costs and benefits of the proposal, the potential impacts on the regulated community and on any impacts of the regulation on farm and forest land preservation.

Anyone wishing to submit written comments for the public comment file may do so at the public hearing or by mail, email or fax to John M. Kennedy, VA DEQ-Chesapeake Bay Program, P.O. Box 1105, Richmond VA 23218; (ph.) 804-698-4312; (fax) 804-698-4116; (email) jmkennedy@deq.virginia.gov. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: www.townhall.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by 5:00 p.m. on the date established as the close of the comment period.

A public hearing will be held and notice of the public hearing can be found on the Virginia Regulatory Town Hall web site and in the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

Analysis not performed as no small businesses are affected.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

None expected.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

No viable alternative approach, less burdensome or intrusive, identified.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and

one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

No direct impact expected.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
9VAC25-720-120.C.		York River Basin: Nitrogen and phosphorus waste load allocations to restore the Chesapeake Bay and its tidal rivers.	1) For the Doswell WWTP (VA0029521): <ul style="list-style-type: none"> • Delete the TN waste load allocation figure of "65,601", and replace with "18,273". • Delete the TP waste load allocation figure of "14,923", and replace with "2,132". 2) Add "Bear Island Paper Company" to the listing, with a total nitrogen waste load allocation figure of 47,328 pounds per year, and a total phosphorus waste load allocation figure of 12,791 pounds per year

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
9VAC25-820-10		Definitions.	Add the following text as the last sentence of the definition for "Existing facility": " <u>Existing facility shall also mean and include any industry which holds a separate waste load allocation in the Water Quality Management Planning Regulation but does not hold an individual VPDES permit authorizing its discharge.</u> "
9VAC25-820-20		Purpose, applicability, delegation of authority.	Amend Section B as follows (added text underlined): "This general permit regulation governs facilities holding individual VPDES permits <u>or which otherwise meet the definition of existing facility</u> that discharge or propose to discharge total nitrogen or total phosphorus to the Chesapeake Bay or its tributaries."

<p>9VAC25-820-70</p>		<p>General Permit.</p>	<p>Amend the first introductory section as follows (added text underlined): “In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant thereto, owners of facilities holding a VPDES individual permit <u>or which otherwise meet the definition of existing facility</u>, with total nitrogen and/or total phosphorus discharges to the Chesapeake Bay or its tributaries, are authorized to discharge to surface waters and exchange credits for total nitrogen and/or total phosphorus.”</p>
<p>9VAC25-820-70</p>		<p>General Permit.</p>	<p>Amend Section H.1.c. (Registration Statement) as follows (added text underlined): “VPDES permit numbers for all permits assigned to the facility, <u>or pursuant to which the discharge is authorized;</u>”</p>